Unofficial translation

BANK INDONESIA REGULATION
NUMBER: 7 / 36 / PBI / 2005
CONCERNING
SWAP HEDGING TRANSACTIONS

THE GOVERNOR OF BANK INDONESIA,

Considering:

a. whereas Bank Indonesia is vested with the task of prescribing and implementing monetary policy, regulating and ensuring the expeditious operation of the payment system, and regulating and supervising banks in order to achieve and maintain stability in the rupiah;
b. whereas investment in Indonesia has impact bearing on activity on the domestic foreign exchange market that affects movement in the value of the rupiah;
c. whereas fluctuation in the value of the rupiah could lead to uncertainties in investment, and therefore hedging is a necessity for investment;
d. whereas to support the stability of the rupiah and as a prudential measure to ensure the integrity and stability of the Indonesian financial system, measures are needed to ease the pressure on the rupiah exchange rate;
e. now therefore based on the premises referred to in letter a, letter b, letter c, and letter d, it is necessary to enact new provisions concerning swap transactions between banks and Bank Indonesia in a Bank Indonesia Regulation;

In view ...

In view of:

1. Act Number 7 of 1992 concerning Banking (State Gazette of the Republic of Indonesia Number 31 of 1992, Supplement to the State Gazette of the Republic of Indonesia Number 3472) as amended by Act Number 10 of 1998 (State Gazette of the Republic of Indonesia Number 182 of 1998, Supplement to the State Gazette of the Republic of Indonesia Number 3790);
2. Act Number 23 of 1999 concerning Bank Indonesia (State Gazette of the Republic of Indonesia Number 66 of 1999, Supplement to the State Gazette Number 3843) as amended by Act Number 3 of 2004 (State Gazette of the Republic of Indonesia Number 7 of 2004, Supplement to the State Gazette of the Republic of Indonesia Number 4357);
3. Act Number 24 of 1999 concerning Foreign Exchange Flows and the Exchange Rate System (State Gazette of the Republic of Indonesia Number 67 of 1999, Supplement to the State Gazette Number 3844);

HAS DECREED:

To enact: THE BANK INDONESIA REGULATION CONCERNING SWAP HEDGING TRANSACTIONS.

CHAPTER I
GENERAL PROVISIONS

Article 1

The terminology used in this Bank Indonesia Regulation has the following meanings:

1. “Bank” is a Commercial Bank as defined in Act Number 7 of 1992 concerning Banking as amended by Act Number 10 of 1998, including a branch office of a foreign bank in Indonesia but not including an office of a bank incorporated in Indonesia that is operating outside Indonesia.
2. “Swap Transaction” is a transaction for exchange of two currencies by spot sale/purchase with forward resale/repurchase, conducted simultaneously with the same bank and applying a premium or discount and exchange rate that is determined and agreed at the date of concluding the transaction.
3. “Bank Swap Buying Transaction” is a transaction for exchange of two currencies by spot sale with forward repurchase, conducted simultaneously with Bank Indonesia and at a premium or discount and exchange rate on the date of concluding the transaction.
4. “Hedging” is a means or technique for minimizing risk arising from or predicted to arise from price fluctuation on the financial market.
5. “Swap Hedging Transaction” is a Bank swap buying transaction in foreign currency against the rupiah for hedging purposes, concluded between a Bank and Bank Indonesia.
6. “Underlying Swap Hedging Transaction”, hereinafter referred to as Underlying Transaction, is a swap transaction conducted between a Bank and a customer that is subsequently passed on to Bank Indonesia in a Swap Hedging Transaction.
7. “Foreign Borrowing” is the liability of a resident to non-resident denominated in foreign currency, based on a loan agreement.
8. “Resident” is any natural person, legal entity, or other entity domiciled or intending to be domiciled in Indonesia for no less than 1 (one) year, including diplomatic offices and staff of the Republic of Indonesia posted outside Indonesia.

CHAPTER II ...

CHAPTER II
SWAP HEDGING TRANSACTIONS

Article 2

(1) Banks may conduct Swap Hedging Transactions with Bank Indonesia.

(2) Swap Hedging Transactions as referred to in paragraph (1) shall be conducted on the basis of Underlying Transactions.

(3) Underlying Transaction as referred to in paragraph (2) shall meet the following requirements:

a. remaining maturity of at least 3 (three) months; and

b. based on investment by a Bank customer in the real sector in Indonesia for a period of at least 3 (three) months, funded in whole or in part by a Foreign Borrowing in cash.

(4) The amount of an Underlying Transaction as referred to in paragraph (3) shall be no more than the amount of the Foreign Borrowing.

(5) The amount of a Swap Hedging Transaction as referred to in paragraph (1) shall be no more than the amount of the Underlying Transaction.

Article 3

A Bank as referred to in Article 2 paragraph (1) shall come within the classification of foreign exchange Bank with a composite rating of at least 3 (three).

Article 4

(1) The term of a Swap Hedging Transaction shall be at least 3 (three) months and no more than 6 (six) months.

(2) If the remaining term of the Underlying Transaction is less than 6 (six) months, the term of the Swap Hedging Transaction shall be no more than the remaining term of the Underlying Transaction.

(3) The remaining term of the Underlying Transaction as referred to in paragraph (2) shall be no more than the remaining maturity of the Foreign Borrowing.

Article 5

Swap Hedging Transactions shall be no less than the equivalent of 500,000.00 US dollars (five hundred thousand US dollars) and no more than the value of the Underlying Transaction.

Article 6

(1) A Swap Hedging Transaction may be renewed using the same Underlying Transaction.

(2) Renewal of Swap Hedging Transaction as referred to in paragraph (1) shall meet the following requirements:

a. The previous Swap Hedging Transaction has reached maturity;

b. The Underlying Transaction has a remaining term of at least 3 (three) months;

(3) Any renewed Swap Hedging Transaction as referred to in paragraph (1) shall be treated as a new Swap Hedging Transaction.

Article 7

Banks are prohibited from using an Underlying Transaction more than once as a basis for a Swap Hedging Transaction prior to maturity of the first Swap Hedging Transaction.

Article 8 ...

Article 8

(1) Bank Indonesia shall announce the premium or discount for Swap Hedging Transactions.

(2) The premium or discount as referred to in paragraph (1) shall be calculated on the basis of market premiums.

(3) Premium or discount for an Underlying Transaction shall be set at no more than 12.5 (twelve point five) basis points above the premium or discount for the Swap Hedging Transaction.

Article 9

(1) Swap Hedging Transactions shall be conducted in the US dollar currency against the rupiah.

(2) If deemed necessary, Bank Indonesia may conduct Swap Hedging Transactions in other foreign currencies against the rupiah.

(3) The currency exchange rate against the rupiah used in Swap Hedging Transactions shall be the buying rate taken from the Bank Indonesia Transaction Exchange Rates on the transaction date.

CHAPTER III

OPERATION OF TRANSACTIONS

Article 10

(1) Swap Hedging Transactions shall be conducted each working day commencing from 11.00 through 12.00 hours local time in Jakarta.

(2) If monetary conditions are such that Swap Hedging Transactions are not possible, Swap Hedging Transaction activity shall be canceled.

Article 11 ...

Article 11

The mechanism for Swap Hedging Transactions is stipulated as follows:

a. Bank Indonesia shall announce the Swap Hedging premium or discount no later than 11.00 hours local time in Jakarta on the day of the Swap Hedging Transaction by means of an information system, including but not limited to Reuters and/or Bloomberg.
b. Banks may conduct Swap Hedging Transactions with Bank Indonesia using the Reuters Monitoring Dealing System (RMDS) communications facility commencing from 11.00 hours through 12.00 hours local time in Jakarta.
c. In each swap transaction as referred to in the above letter b, Banks are required to state the following in the deal conversation:
   1. The reference number of the Underlying Transaction;
   2. A declaration from the Bank that all requirements pertaining to the Swap Hedging Transaction have been met;
   3. Confirmation from the Bank (deal done).

CHAPTER IV

TRANSACTION DOCUMENTS

Article 12

(1) Banks shall be responsible for the completeness of the original documents for Swap Hedging Transactions and the original documents for Underlying Transactions.
(2) The Swap Hedging Transaction documents as referred to in paragraph (1) shall comprise swap contracts between the Bank and customers.
(3) The Underlying Transaction documents as referred to in paragraph (1) shall consist of:

a. the Loan Agreement;
b. written statement from the customer, declaring that the rupiah funds received from the Swap Hedging Transaction shall be used for investment;
c. written statement from the customer, declaring that the investment on which the Underlying Transaction is based shall not be used as basis for any other Underlying Transaction at the same Bank or another Bank during the period of the Swap Hedging Transaction.

(4) Banks are required to maintain the documents referred to in paragraph (1) in the office of the Bank at which the Swap Hedging Transaction is conducted until the Swap Hedging Transaction reaches maturity.

(5) Banks are required to maintain the original documents for Swap Hedging Transactions and the original documents for Underlying Transactions in accordance with the applicable laws and regulations.

CHAPTER V
SETTLEMENT OF TRANSACTIONS

Article 13

(1) Banks shall be responsible for settlement of Swap Hedging Transactions.

(2) The Bank shall deliver funds in foreign currency on the first leg of the Swap Hedging Transaction at the value date.

(3) The Bank shall provide rupiah funds in the demand deposit account of the Bank at Bank Indonesia on the second leg of the Swap Hedging Transaction at the value date.

CHAPTER VI ...

CHAPTER VI

SANCTIONS

Article 14

(1) Any Bank violating the provisions referred to in Article 2 paragraph (2), Article 2 paragraph (3), Article 2 paragraph (4), Article 2 paragraph (5), Article 4 paragraph (2), Article 4 paragraph (3), Article 6 paragraph (2), Article 7, Article 8 paragraph (3), Article 12 paragraph (1), Article 12 paragraph (4), or Article 12 paragraph (5) shall be liable to the following sanctions:
   a. written warning; and
   b. financial penalty of 2.5% (two point five percent) of the rupiah-denominated value of the Swap Hedging Transaction using the selling rate taken from Bank Indonesia Transaction Rates on the date of imposition of sanctions.
(2) If the Bank fails to comply with the settlement obligation as referred to in Article 13 paragraph (2) and paragraph (3), the Bank shall be liable to the following sanctions:
   a. written warning; and
   b. financial penalty calculated on the basis of:
      1. the average effective Fed Funds rate during the period of delay plus 200 (two hundred) basis points, multiplied by the amount of the transaction, multiplied by days of delay, and divided by 360 (three hundred and sixty) for settlement of payment obligations in the US dollar currency.
      2. the average official rate issued by the central bank or monetary authority in the country of the relevant currency effective for the period of delay plus 200 (two hundred) basis points, multiplied by

the transaction …

the transaction amount, multiplied by days of delay, and divided by 360 (three hundred and sixty), for settlement of financial penalty in a non-US dollar foreign currency;

3. the effective Bank Indonesia rate (BI rate) plus 200 (two hundred) basis points, multiplied by the amount of the transaction, multiplied by days of delay, and divided by 360 (three hundred and sixty) for settlement of financial penalty in rupiahs.

(3) Financial penalty as referred to in paragraph (1) letter b shall be settled by debiting the rupiah demand deposit account of the relevant Bank at Bank Indonesia.

(4) Financial penalty as referred to in paragraph (2) letter b shall be settled by debiting the demand deposit account of the relevant Bank in foreign currency or in rupiahs at Bank Indonesia.

(5) The exchange rate used in the settlement of financial penalty in a non-US dollar foreign currency as referred to in paragraph (2) letter b shall be the Reuters indicated exchange rate at 08.00 hours local time in Jakarta on the debiting date.

CHAPTER VII

CONCLUDING PROVISIONS

Article 15

With the enactment of this Bank Indonesia Regulation, Decree of the Board of Managing Directors of Bank Indonesia No. 28/30/KEP/DIR dated July 14, 1995, concerning Bank Indonesia Swap Transactions with Banks is revoked and declared no longer valid.

Article 16 …

Article 16

This Bank Indonesia Regulation shall come into force on October 3, 2005.

Enacted in: Jakarta

Dated September 30, 2005

THE GOVERNOR OF BANK INDONESIA

BURHANUDDIN ABDULLAH

STATE GAZETTE OF THE REPUBLIC OF INDONESIA NUMBER 91 OF 2005

DPD

ELUCIDATION

TO

BANK INDONESIA REGULATION

NUMBER: 7/ 36 /PBI/2005

CONCERNING

SWAP HEDGING TRANSACTIONS

GENERAL REVIEW

The increasingly competitive and integrated international financial system has given birth to a global economy with easy movement of capital in the form of portfolio and direct investments. As a rule, direct investment is for the long term, and is therefore vulnerable to exchange rate risk. In order to minimize this risk, investors hedge their investments, among others, by using swap instruments.

Over time, problems has arisen in which domestic banks accommodate customer hedging needs for relatively short periods, because of the risk factors. With the relatively limited availability of long-term swap instruments on the market, customers have been discouraged from hedging their investments. Because of this, transactions have been conducted on a spot basis, giving rise to market fluctuations in the rupiah.

In order to resolve this problem while also building the market for medium and long-term hedging, Bank Indonesia is providing Banks with a facility to pass on hedging transactions with their investor customers to Bank Indonesia. This represents a measure to stabilize the value of the rupiah, which in turn is expected to promote investment and export activity in Indonesia.

ARTICLE BY ARTICLE

Article 1

Self-explanatory

Article 2

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

Investment in Indonesia as referred to herein is for development of infrastructure that will produce goods for export and/or for development/ expansion of public facilities, with a term of at least 3 (three) months.

Paragraph (4)

Self-explanatory.

Paragraph (5)

Self-explanatory

Article 3

The composite rating shall refer to the applicable Bank Indonesia Regulation governing the Bank rating system.

Article 4

Paragraph (1)

Self-explanatory

Paragraph (2) …

Paragraph (2)

For example, if the term of an Underlying Transaction is 4 (four) months, the term of the Swap Hedging Transaction shall be no more than 4 (four) months.

Paragraph (3)

For example, if the remaining maturity of a Foreign Borrowing is 4 (four) months, the term of the Underlying Transaction shall be no more than 4 (four) months and thus the term of the Swap Hedging Transaction shall be no more than 4 (four) months.

Article 5

Self-explanatory

Article 6

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Article 7

Self-explanatory

Article 8

Paragraph (1)

Self-explanatory

Paragraph (2) ...

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Article 9

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Article 10

Paragraph (1)

Self-explanatory

Paragraph (2)

Bank Indonesia shall announce the cancellation of the Swap Hedging Transaction facility 3 (three) days in advance, among others, by means of the Reuters and/or Bloomberg system.

Article 11

Self-explanatory

Article 12

Paragraph (1)

Self-explanatory

Paragraph (2) ...

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Paragraph (4)

Self-explanatory

Paragraph (5)

In the specific case of Loan Agreements documenting Underlying Transactions, Banks shall keep only copies of these Loan Agreements.

Article 13

Paragraph (1)

Self-explanatory

Paragraph (2)

“First leg” is defined as the part of a Swap Hedging Transaction that comprises a spot transaction, in which the Bank delivers funds in foreign currency and receives rupiahs.

Paragraph (3)

“Second leg” is defined as the part of a Swap Hedging Transaction that comprises a forward transaction, in which the Bank delivers rupiahs and receives foreign currency.

Article 14

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Paragraph (3) ...

Paragraph (3)

Self-explanatory

Paragraph (4)

Self-explanatory

Paragraph (5)

Self-explanatory

Article 15

Self-explanatory

Article 16

Self-explanatory